

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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U.S. DEPARTMENT OF COMMERCE  
OFFICE OF THE SECRETARY

In the Matter of )  
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Petition of the SBC Companies )  
For Forbearance from Regulation )  
as a Dominant Carrier for )  
High Capacity Dedicated Transport )  
Services in Specified MSAs )

CC Docket No. 98-227

**REPLY COMMENTS OF KMC TELECOM, INC.**

KMC Telecom, Inc. ("KMC"), hereby respectfully submits the following reply comments to pleadings filed in the above-referenced proceeding in which the SBC Companies seek forbearance from regulation as a dominant carrier for high capacity dedicated transport services in 14 metropolitan service areas ("MSAs"). The majority of comments filed in this proceeding support one or more of points raised by KMC in its comments filed on January 21, 1999 ("KMC Comments"). Specifically, KMC and others agree that: (1) SBC continues to possess market power in the provision of high capacity services in the 14 MSAs at issue; (2) the issues raised in SBC's Petition are more appropriately addressed in the Commission's *Access Charge Reform Proceeding*<sup>1</sup>; and (3) deregulation of SBC's high capacity services should not be granted until

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<sup>1</sup> *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, usage of the Public Switched Network by Information Service and Internet Access Providers*, Notice or Proposed Rulemaking, Third Report and Order, and Notice of Inquiry, CC Docket Nos. 96-262, 94-1, 91-213, 96-263, 11 FCC Rcd. 21354 (1996).

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SBC has open its markets to local competition. For these reasons, SBC's request for forbearance fails to meet the requirements of Section 10(c), and therefore, must be denied.

As explained in KMC's Comments, KMC is authorized to provide, through its subsidiaries, competitive local exchange and long distance services in over eighteen states and in Puerto Rico. KMC has installed state-of-the-art networks in various cities within its operating territory, including Huntsville, Alabama; Melbourne, Pensacola, Sarasota and Tallahassee, Florida; Savannah and Augusta, Georgia; Topeka, Kansas; Baton Rouge and Shreveport, Louisiana; Greensboro and Winston-Salem, North Carolina; Corpus Christi, Texas; Roanoke, Virginia; and Madison, Wisconsin, and will soon build similar networks in several other cities in the Southeast and Midwest. If SBC's Petition is granted, it will impede the efforts of new entrants, such as KMC, which are seeking to effectively compete in the SBC markets.

**I. The Comments Clearly Demonstrate that SBC's Petition Fails To Meet the Forbearance Requirements of Section 10(c).**

**A. The Evidence Shows that the Quality Strategies Study is Flawed.**

As demonstrated by KMC and other participants in this proceeding, the Quality Strategies study ("Study") submitted by SBC in support of its Petition fails to provide the basis for many of its findings and contains many fundamental flaws.<sup>2</sup> Most notably, the Study's measurement of the market share for high capacity services is inadequate. As explained in the comments, this measurement is flawed for several reasons. First, the Study does not adequately explain its

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<sup>2</sup> See MCI WorldCom Opposition at 7-14; Opposition of Sprint Corporation ("Sprint Opposition") at 6-11; AT&T Opposition at 4-14; and Comments of the Association for Local Telecommunications Services ("ALTS Comments") at 6 n.8.

methodology or provide sufficient supporting data. Second, the analysis ignores other relevant factors for measuring market share, such as revenues and geographic areas served.<sup>3</sup>

First, the Study fails to explain the methodology used to reach its conclusions and is void of any supporting data to substantiate its conclusions. The Study appears to use DS-1 equivalents as the basis for measuring market estimates for high capacity services.<sup>4</sup> Where the market share estimates are based on DS-1 equivalents, then SBC's market share loss is most likely overstated. As pointed out by AT&T and MCI WorldCom, under these assumptions, the loss of a DS-3 is considered the same as the loss of 28 DS-1s, while the price for the DS-3 is only two or three times greater.<sup>5</sup> The result is to overestimate greatly SBC's market share losses. Moreover, as pointed out by MCI WorldCom, when measured in terms of revenue, rather than equivalent circuits, the focus on these facilities is less significant and ignores the revenue issues associated with the high costs of multiplexing, interoffice transport and channel termination elements, which are relevant factors in determining competition and market share.<sup>6</sup> Neither U S West's comments on this point nor the economic studies it cites definitely explain why such revenue factors are not relevant in assessing market power for these services.

As the pleadings demonstrate, the market share estimate also fails to distinguish between end user and carrier customers of high capacity services, providing another indication that SBC's

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<sup>3</sup> KMC Comments at 3; Sprint Opposition at 8-10; AT&T Opposition at 4-5; MCI WorldCom Opposition at 14.

<sup>4</sup> See e.g., Comments of U S West Communications, Inc. at 3.

<sup>5</sup> AT&T Opposition at 5; see also MCI WorldCom Opposition at 14 and n.22.

<sup>6</sup> MCI WorldCom Opposition at 14; see generally *Motion of AT&T Corp. To Be Reclassified as a Non-Dominant Carrier*, 11 FCC Rcd. 3271 (1995).

market share loss is overstated. As noted by several commenters, this factor is critical because not only does SBC still control the majority of the transport for high capacity services for carriers, SBC also controls virtually 100% of the transport to end users, or the “last mile” into the customer premises.<sup>7</sup> In sum, the Study’s flaws render SBC’s claims of loss of market share in the high capacity services market questionable at best.

**B. SBC Continues to Exercise Market Power in the High Capacity Services Market.**

In addition to understating its market share in the high capacity services market, SBC also misstates its degree of market power in terms of supply and demand elasticities. Unlike SBC’s unsupported general assertions regarding its lack of market power, many of the pleadings in this proceeding explain in detail how the current status of “competition” in the high capacity market neither allows carriers to easily take business away from SBC so as to constrain SBC’s unilateral pricing decisions nor allows customers to easily switch to an alternative competitive provider.<sup>8</sup> First, as explained in detail by MCI WorldCom, the facilities of competitors within the 14 MSAs at issue only cover a limited number of high capacity routes.<sup>9</sup> Thus, competition, if any, is limited to only a small geographical area within each of the 14 MSAs at issue. Second, SBC’s long term agreements, high termination liability and excessive nonrecurring charges make it

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<sup>7</sup> KMC Comments at 3; Sprint Opposition at 8; AT&T Opposition at 6-7.

<sup>8</sup> KMC Comments at 4; MCI WorldCom Opposition at 7-12; AT&T Opposition at 14.

<sup>9</sup> MCI WorldCom Opposition at 7.

extremely expensive for a customer to switch suppliers.<sup>10</sup> Thus, even if alternative facilities were available, SBC has taken steps to ensure that it will not be economically feasible for a customer to switch to an alternative competitive provider.

For these reasons and as demonstrated by the pleadings, SBC's Petition does not meet the forbearance requirements of Section 10(c). The few pleadings filed in support of SBC's Petition only set forth general statements of agreement on SBC's position.<sup>11</sup> These pleadings do not provide any additional information to substantiate SBC's claim that it lacks market power in the high capacity services market.

Rather, the evidence presented in the majority of the comments filed shows that SBC continues to exercise market power in the high capacity services market. As a result, rate regulation is necessary to protect consumers from paying unjust and discriminatory rates. Contrary to SBC assertions, if granted the pricing flexibility it seeks, SBC will be able to overcharge customers in select markets, chart discriminatory rates, engage in predatory pricing and cross-subsidize these services.<sup>12</sup> To allow SBC to engage in such behavior will thwart competition and harm consumers; and therefore, clearly is contrary to the public interest. For these reasons, the Commission must deny SBC's Petition.

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<sup>10</sup> MCI WorldCom Opposition at 10-12; AT&T Opposition at 14.

<sup>11</sup> Comments of Ameritech; Comments of U S West Communications, Inc.; Comments of the United States Telephone Association.

<sup>12</sup> MCI WorldCom Opposition at 17; ALTS Comments at 7; Sprint Opposition at 5-6,11; AT&T Opposition at 15-17.

**II. The Issues Raised in the SBC Petition Should be Considered in the *Access Charge Reform Proceeding*.**

The majority of the parties filing comments, including KMC, agree that the pricing flexibility issues raised in the SBC Petition should be considered, if at all, in the Commission's *Access Charge Reform Proceeding*.<sup>13</sup> SBC's Petition, like the U S West Petition and Bell Atlantic Petition, seeks an ad hoc ruling on the pricing flexibility of its high capacity services on an MSA by MSA basis, thereby attempting to circumvent related issues raised in the *Access Charge* proceeding that are critical to RBOC pricing flexibility for interstate access services. In light of the broader implications of this issue, the Commission should not make such decisions on RBOC pricing flexibility on a piecemeal basis. This type of decision making will undermine the significant competition issues remaining to be addressed in the high capacity services market, will waste valuable Commission resources, and will lead to inconsistency and industry uncertainty.

**III. Forbearance Should Not Be Granted Until SBC Opens Its Markets To Local Competition**

Several commenters also agree with KMC's position that SBC should not be entitled to forbearance from rate regulation for its high capacity services until it has demonstrated that it has opened its local markets to competition.<sup>14</sup> SBC's Petition represents yet one more attempt by an RBOC to seek deregulation without having met the requirements for local market competition.

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<sup>13</sup> KMC Comments at 4-6; ALTS Comments at 3-4; MCI WorldCom Opposition at 3-5; Time Warner Opposition at 22-23; AT&T Opposition at 17 n. 24.

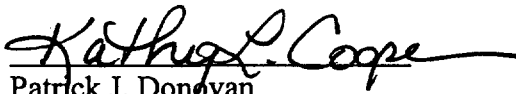
<sup>14</sup> KMC Comments at 6-8; Sprint Opposition at 13; AT&T Opposition at 16-17; CompTel Opposition at 8.

If SBC's Petition is granted, it will reduce SBC's incentive to open up the local markets in the 14 MSAs at issue.<sup>15</sup> In addition, as noted by AT&T, it would allow SBC to selectively apply pricing flexibility to eliminate what little competition may exist in targeted markets.<sup>16</sup>

#### IV. Conclusion

For these reasons, KMC urges the Commission to deny SBC's request for forbearance from dominant carrier regulation for provision of high capacity services.

Respectfully submitted,



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Dated: February 11, 1999

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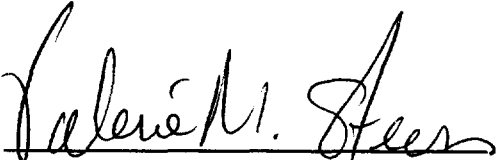
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<sup>15</sup> Sprint Opposition at 13; CompTel Opposition at 8.

<sup>16</sup> AT&T Opposition at 17.

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply Comments was sent by hand delivery or by U.S. first class mail, postage prepaid, on this 11<sup>th</sup> day of February, 1999 to the attached list of parties.



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